

JUL 30 2009

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

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|--------------------------|---|-----------------------|
| STATE OF NEBRASKA        | ) |                       |
| DEPARTMENT OF INSURANCE, | ) |                       |
|                          | ) | FINDINGS OF FACT,     |
| PETITIONER,              | ) | CONCLUSIONS OF LAW,   |
|                          | ) | RECOMMENDED ORDER AND |
|                          | ) | ORDER                 |
| vs.                      | ) |                       |
|                          | ) |                       |
| EDWARD L. BRECKENRIDGE,  | ) | CAUSE NO.: A-1830     |
|                          | ) |                       |
| RESPONDENT.              | ) |                       |

This matter came on for hearing on the 30th day of June, 2009, and on the 16<sup>th</sup> day of July, 2009, before Janette L. Adair, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Eric Dunning, and Matthew Holman, a Senior Certified Law Student. Edward L. Breckenridge ("Respondent") was present. Respondent was not represented by counsel. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Testimony was provided by Jeanette McArthur, Insurance Investigator for the Consumer Affairs Division of the Department; Lisa Breckenridge, wife of Respondent; and Respondent. Evidence in the form of exhibits was introduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident insurance producer whose registered address with the Department is American Family Insurance, 6020 Ames Ave, Omaha, NE 68104. (Ex. 2).

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. On or about June 2, 2009, the Petition and Notice of Hearing were served upon Respondent by mailing the same to Respondent's registered business address by certified mail, return receipt requested. On or about June 5, 2009, the Petition and Notice of Hearing were received by the Respondent. (Ex. 1).

4. The hearing was opened on June 30, 2009. During the hearing, the Department offered the affidavit of Insurance Investigator Jeanette McArthur (hereinafter "McArthur"). Respondent objected to the admission of the affidavit and requested the opportunity to cross examine McArthur. At that time, the hearing was continued to a date to be agreed upon by the parties when McArthur would be available to testify.

5. On or about July 7, 2009, an Order Continuing Hearing was entered in this matter continuing the hearing to July 16, 2009, a date agreed upon by the parties.

6. The hearing was reopened on July 16, 2009, with both parties present.

7. On or about December 4, 2008, McArthur sent a written inquiry to the Respondent at his registered business address via regular first class U.S mail. The letter stated, "Nebraska Revised Statute 44-1525(11) requires response within fifteen working days." (Ex. 4).

8. On or about December 30, 2008, McArthur sent a second written inquiry to the Respondent at his registered business address via certified mail. The letter stated, "[f]ailure to respond to this Department within fifteen working days may be construed as an unfair trade practice, as provided by Nebraska Revised Statute 44-1525(11)" and included a copy of the written inquiry dated December 4, 2008. (Ex. 5).

9. On or about December 31, 2008, Respondent received the second written inquiry sent to him by McArthur via certified mail. (Ex. 5).

10. On or about February 27, 2009, McArthur sent a third written inquiry to the Respondent at his registered business address via regular first class U.S. mail. The letter stated, "[w]e are concerned that your non-response to date may be considered an unfair trade practice act, as defined by Nebraska Revised Statute 44-1525(11)." (Ex. 6).

11. On or about March 12, 2009, Lisa Breckenridge contacted McArthur via telephone and advised that a response to the written inquiry would be sent the next week. During this telephone conversation, Lisa Breckenridge and McArthur discussed the scope of the required response.

12. On or about March 19, 2009, Respondent sent a response to McArthur's written inquiries via regular U.S. mail. On or about March 20, 2009, McArthur received the response from Respondent. This response did not answer all seven of the questions listed in McArthur's written inquiries. (Ex. 7).

### DISCUSSION

The Petitioner provided evidence of three written inquiries sent to Respondent by McArthur. Respondent acknowledges receipt of the second and third written inquiries, but denies receiving the first written inquiry. The Respondent made no effort to contact McArthur after receiving the second inquiry, nor did Respondent provide a response to the second inquiry. After receiving the third inquiry, Lisa Breckenridge, a licensed insurance producer and assistant to Respondent, contacted McArthur via telephone on March 12, 2009, and made arrangements for a response to be provided the week of March 16, 2009. Lisa Breckenridge and McArthur discussed the scope of the required

response, and McArthur advised Lisa Breckenridge that the response could be brief and just tell what happened. Respondent provided a response to McArthur as arranged by Lisa Breckenridge. The response did not answer all of the questions listed in the written inquiries. Respondent and Lisa Breckenridge both contend that the limited response provided was based on the instructions provided by McArthur during the phone conversation on March 12, 2009. Respondent was not notified that the response provided was insufficient prior to the filing of the petition initiating this administrative action.

Each of the three written inquiries included notice that failure to respond within fifteen working days may be construed as a violation of Neb. Rev. Stat. § 44-1525(11). Consequently, Respondent was on notice of a potential violation of the Unfair Insurance Trade Practices Act if he failed to respond to each of the inquiries within fifteen working days of receipt. As such, failure to respond was flagrant and in conscious disregard of the Unfair Insurance Trade Practices Act.

Nebraska law provides a range of penalties applicable in this case including revocation or suspension of the insurance producer license, and/or a monetary penalty of up to one thousand dollars (\$1,000) per violation. In light of the fact that Respondent has had no prior disciplinary actions taken against him, there was no underlying misconduct aside from the failure to provide a prompt and complete response, and Respondent's assurances that he will personally and promptly handle future written inquiries from the Department, this hearing officer is recommending that a monetary penalty be assessed in the amount of \$650.00 for Respondent's failure to respond to the second written inquiry. The response to the third written inquiry was incomplete. However, Respondent's assistant actively sought clarification as to the scope of this response, and it appears that there was a misunderstanding during this conversation. As such, this hearing officer is

declining to assess a monetary penalty for failure to provide a complete response to the third written inquiry.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat.* §§ 44-101.01 and 44-4047 *et seq* (Reissue 2004).

2. The Department has personal jurisdiction over Respondent.

3. Respondent's failure to provide a written response to the written inquiry from Consumer Affairs Division Investigator Jeanette McArthur dated December 30, 2008, or to request additional reasonable time to respond, within fifteen working days of receipt is a violation of an insurance law, specifically Neb. Rev. Stat. § 44-1525(11). This violation was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act.

4. Neb. Rev. Stat. § 44-4059(1)(b) provides that the Director may suspend, or revoke an insurance producer's license, or levy an administrative fine for violating any insurance law or violating any rule, regulation, subpoena, or order of the Director of another state's insurance commissioner or director.

5. Neb. Rev. Stat. § 44-4059(4) provides that in lieu of any applicable denial, suspension, or revocation of a license, an insurance producer violating Neb. Rev. Stat. § 44-4059(1) may be subject to an administrative fine of not more than one thousand dollars per violation.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent be ordered to PAY an administrative fine in the amount of \$650.00 within thirty (30) days of the date the Director or her designee signs the certificate adopting this order.

Dated this 28<sup>th</sup> day of July, 2009.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
Janette L. Adair  
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. Edward L. Breckenridge, Cause No. A-1830.

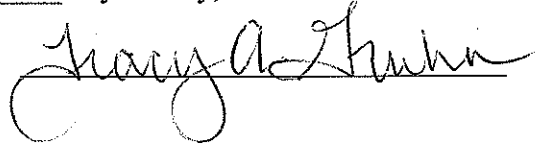
Dated this 30<sup>th</sup> day of July, 2009.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
ANN M. FROHMAN  
Director of Insurance

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon the Respondent by mailing a copy to Respondent at American Family Insurance, 6020 Ames Ave, Omaha, NE 68104, by certified mail, return receipt requested, on this 30<sup>th</sup> day of July, 2009.

A handwritten signature in cursive script, reading "Tracy A. Zuhra", written over a horizontal line.